INTER DIAM PTE LTD

v.

PJ DIAMOND CENTRE SDN BHD

HIGH COURT MALAYA, SHAH ALAM
HISHAMUDIN MOHD YUSOF J
[CIVIL SUIT NO: MT1-22-972-98]
10 OCTOBER 2001

CIVIL PROCEDURE: *Summary judgment - Appeal against dismissal - Plaintiff's claim for sum owing for goods delivered to defendant - Whether defendant accepted goods concerned - Whether plaintiff's claim in excess of amount actually owing by defendant - Whether part of plaintiff's claim expressed in US dollars was bad in law*

CIVIL PROCEDURE: *Pleadings - Statement of claim - Part of sum of money claimed expressed in foreign currency - Whether claim rendered bad in law*

CONTRACT: *Acceptance - Whether there was acceptance of goods - Sale of Goods Act 1957, s. 24*

The plaintiff applied for summary judgment against the defendant on a claim for payment due for goods (diamonds) allegedly sold and delivered by the plaintiff to the defendant. The application was dismissed by the senior assistant registrar. Hence, the plaintiff's appeal. The issues were: (1) whether the defendant had accepted the goods concerned; (2) whether the plaintiff's claim was in excess of the amount actually owing by the defendant as the defendant had allegedly returned some of the goods concerned; and (3) whether part of the plaintiff's claim expressed in US dollars was bad in law by reason of the plaintiff's omission to convert it into Malaysian ringgit.

Held:

[1] There was no merit in the defendant's argument that it had not accepted the goods from the plaintiff. Firstly, it was not disputed that there was a seller and buyer relationship between the plaintiff and the defendant. Secondly, the defendant admitted the sum owing to the plaintiff in a letter. Thirdly, the defendant did not reject nor return the goods to the plaintiff. Therefore, by virtue of s. 24 of the Sale of Goods Act 1957 the property in the goods passed from the plaintiff to the defendant. (pp 717 g-i & 718 a-c)

[2] The evidence showed that the plaintiff had returned the diamonds (earlier returned by the defendant to the plaintiff) to the defendant. Therefore, the defendant's argument that the sum alleged by the plaintiff was far in excess of the amount owed by the defendant must be rejected. (p 718 d-f)

[3] A plaintiff suing under a contract may make a claim in foreign currency provided such currency is the currency agreed upon by the parties to the contract for the purpose of payment. In the present case, the claim in US dollars in the statement of claim was legally in order since it was agreed by the parties that payment should be in US dollars. (p 728 d)

[4] The alternative claim in the equivalent Malaysian currency in the statement of claim, without actually specifying the amount in Malaysian ringgit, was legally proper and the date of conversion could either be the date of judgment or the date of payment. (p 728 e)

[Appeal allowed.]

Case(s) referred to:
Ascot International Pte Ltd v. Elevic Trading Sdn Bhd [1996] 2 CLJ 645 ***(not foll)***
Miliangos v. George Frank (Textiles) Ltd [1975] 3 All ER 801 ***(refd)***
Overseas Chinese Banking Corporation Ltd v. Firm of Yaik Joo Ann [1936] MLJ Rep 88 ***(not foll)***
Re P Suppiah, (Tara Rajaratnam, judgment creditor) [1989] 2 MLJ 479 ***(refd)***
Re United Railways of the Havana and Regla Warehouses [1960] 2 All ER 332 ***(refd)***
Schorsch Meier GmbH v. Hennin [1975] All ER 152 ***(refd)***
Wardley Ltd v. Tunku Adnan [1991] 3 MLJ 366 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14
Sale of Goods Act 1957, s. 24

Other source(s) referred to:
Dr Mann, *Legal Aspect of Money*, 3rd edn 1971

For the plaintiff - CH Hoe; M/s Lee Ong & Kandiah
For the defendant - S Murthi; M/s S Murthi & Assoc

Reported by Usha Thiagarajah

JUDGMENT

Hishamudin Mohd Yusof J:
This is an appeal by the plaintiff against the decision of the learned senior assistant registrar of the High Court, Shah Alam, who, on 30 June 1999, dismissed the application of the plaintiff for summary judgment against the defendant pursuant to O. 14 of the Rules of the High Court.

The plaintiff is a company incorporated in Singapore. They are a wholesaler, an exporter and importer of diamonds. The defendant is a company incorporated in Malaysia and has been buying loose diamonds from the plaintiff from time to time. The claim of the plaintiff against the defendant is

for payment due for diamonds (hereinafter shall be referred to as "the goods") allegedly sold and delivered by the plaintiff to the defendant, from the months of May 1997 until October 1997. The amount claimed by the plaintiff comprise:

(a) a sum of RM215,479.10; and

(b) a sum of USD86,488.10, or its equivalent in Malaysian Ringgit as of the date of judgment.

The claim of the plaintiff is supported by eight invoices, as exhibited in the supporting affidavit.

In the present case, having considered the pleadings, the affidavits and submissions, I was fully satisfied that there were no triable issues and accordingly I allowed the appeal of the plaintiff with costs.

The defendant, in resisting the plaintiff's application for summary judgment, raises four issues. However, I think, only three of them deserve consideration, namely:

(1) the issue as to whether or not the defendant, being a buyer, had accepted the goods;

(2) if the answer to (1) above is in the affirmative, the issue as to whether or not the defendant had made partial payments by contra by returning some of the diamonds to the plaintiff; and

(3) the issue as to whether or not part of the claim of the plaintiff, expressed in the statement of claim in US dollars, is bad in law by reason of omission on the part of the plaintiff to convert that sum claimed from US dollars into Malaysia ringgit.

(1) Whether Or Not The Defendant Had Accepted The Goods

It is the contention of the defendant that the goods were delivered on an "on approval" basis, as stated on each of the invoices; and that they had never communicated to the plaintiff that they (the defendant) had agreed to the prices quoted by the plaintiff. The defendant, therefore, argues that there had been no acceptances of the goods by them.

There is clearly no merit in this argument. First, it does not appear to be disputed that, as between the plaintiff and the defendant, there was a seller and buyer relationship. Second, there is a letter from the defendant to the plaintiff dated 18 March 1998 admitting owing the plaintiff the sum of RM215,479 in respect of invoices no. 955, 963, 975 and 983. Third, the

defendant has never rejected nor returned the goods to the plaintiff. Therefore, by virtue of s. 24 of the Sale of Goods Act 1957, the property in the goods passes from the plaintiff to the defendant. Section 24 reads:

> **24. Goods sent on approval or "on sale or return".**
>
> When goods are delivered to the buyer on approval or "on sale or return", or other similar terms, the property therein passes to the buyer:
>
> (a) when he signifies his approval or acceptances to the seller or does any other act adopting the transaction;
>
> (b) if he does not signify his approval or acceptances to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time.

(2) If The Answer To (1) Above Is In The Affirmative, Whether Or Not The Defendant Had Returned The Goods To The Plaintiff

The defendant next argues that the sum alleged by the plaintiff as being the sum owed to them by the defendant is far in excess of the amount that they owed the plaintiff because they had returned some of the diamonds to the value of RM172,565 to the plaintiff on 18 March 1998 as contra payment, and this "substantially reduced the amount owing. This argument too must be rejected. The evidence shows that the plaintiff had on 3 April 1998 returned the diamonds (earlier returned by the defendant to the plaintiff on 18 March 1998) to the defendant. The return of the diamonds by the plaintiff to the defendant was accepted by one Jeff Khor on behalf of the defendant and there is also a note dated 3 April 1998 addressed to the plaintiff by one Kent Chong, the Executive Director of the defendant, confirming the return of the diamonds worth RM172,565 by the plaintiff to the defendant.

(3) Whether Or Not A Part Of The Claim Of The Plaintiff Expressed In A Foreign Currency, Namely, US Dollars, In The Statement Of Claim Is Bad In Law By Reason Of An Omission On The Part Of The Plaintiff To Convert The Sum Claimed From US Dollars Into Malaysia Ringgit

It is further argued by the defendant that a part of the plaintiff's claim must be dismissed on the grounds that the plaintiff in their statement of claim has omitted to convert the sum of USD86,488.10, (a claim in US dollars) into ringgit. In order to fully appreciate the argument, it is necessary to refer to the statement of claim. The relevant parts read:

> 4. The Plaintiff's claim is for the sum of RM215,479.10 and USD86,488.10 being the price of loose diamonds sold and delivered to the Defendant within the months of May 1997 until October 1997. Further particulars of the delivery of the loose diamonds are as follows:

DATE	Invoice No.	Amount Due in RM	Amount Due in USD
21st May 1997	0955	37,957.20	
20th June 1997	0963	62,942.80	
7th July 1997	0975	27,880.00	
16th July 1997	0983	86,699.10	
12th September 1997	0879		40,875.50
24th September 1997	1202		35,580.60
27th October 1997	1206		10,032.00
	Amount Due	215,479.10	86,488.10

5. As the Defendant has failed to make any payments to the Plaintiff. The Plaintiff through their solicitors Messrs Lee Ong & Kandiah had claimed for the sums of RM215,479.10 and USD86,488.10 through an A.R. Registered Letter dated 23rd June 1998 from the Defendant.

6. Notwithstanding the above-mentioned claim by the Plaintiff's solicitors for the sum of RM215,479.10 and USD86,488.10 but to date, the Defendant has failed, refused or otherwise neglected to pay the said sums or any part thereof and the said sums remains due and payable by the Defendant to the Plaintiff.

7. AND the Plaintiff claims from the Defendant:

   7.1 the sum of RM215,479.10;

   7.2 the sum of USD86,488.10 or its equivalent in Ringgit Malaysia on the date of judgement;

   7.3 interests on the said sum mentioned in paragraph 7.1 and 7.2 above at the rate of 8% per annum from the date of this Writ until date of full realisation;

   7.4 costs; and

   7.5.1 any further relief which is deemed fit and just by this Honorable Court.

In support of their contention, the defendant relied on *Ascot International Pte. Ltd. v. Elevic Trading Sdn. Bhd.* [1996] 2 CLJ 645. In this case cited, the plaintiff was a Singapore company and the defendant, a Malaysia company, and the action against the latter was filed in Malaysia. The claim was for goods sold and delivered and the value of the goods was stated in the invoices and delivery orders in the currency of Singapore: S$600,715.27. The plaintiff's statement of claim only stated the amount claimed in Singapore Dollars: S$600,715.27. The amount was not converted to the Malaysian Ringgit. KL Rekhraj JC (as he then was), in dismissing the plaintiff's claim for summary judgment, held that the amount claimed in the statement of claim should have been expressed in Malaysian currency and the failure on the part of the plaintiff to do so was fatal to its O. 14 application. In the words of the learned judge (at p. 648):

> The plaintiff's statement of claim is made in foreign currency – being Singapore Dollars. It was held in the case of *Overseas Chinese Banking Corporation Ltd. v. Firm of Yaik Joo Ann* [1936] MLJ Rep. 88 by Terell J that "when a statement of claim is endorsed upon a specifically endorsed writ in respect of an amount due upon a foreign judgment, the claim should be expressed in Straits Settlement Currency; and it should show the amount in Straits Settlement which is the equivalent of the amount of the foreign currency due on the foreign judgment, calculated as on the date when the foreign judgment was obtained".
>
> Relying upon Terrel J's decision I hold that the writ filed in the Malaysian Court by the plaintiffs on 13 October 1994 should have shown the conversion of the Singapore Dollars with the equivalent value in Malaysian currency before filing the writ in Court; to crystallize the liability of the defendants in local currency; in the face of the continuous exchange loss to the defendant by the fluctuating foreign currency market. Purely on this ground, the O. 14 application for summary judgment must be dismissed for want of conversion of the equivalent value into Malaysian Ringgit before filing.

At this juncture, I shall refer to *Overseas Chinese Banking Corporation*, decided in 1936, the authority relied upon by Rekhraj JC. In this case, Terrel J said in his judgment (at p. 89):

> The plaintiff's applied for summary judgment. The application was opposed on three grounds: (1) that the statement of claim indorsed on the writ was not signed; (2) that the sum claimed was not in Straits currency; and, (3) on the merits.
>
> At the hearing before the Registrar the second objection was upheld and at the request of the plaintiffs the application was referred to a Judge.

At a later part of the judgment, the learned judge ruled (at p. 89):

> As regards the second objection, I have felt some doubt. The rule is that a judgment can only be in local currency, and from this it would appear to follow that the claim must also be expressed in local currency.

On the basis of precedent, Rekhraj JC was legally right in his decision. But the pertinent question is: Is such a principle of law enunciated way back in 1936, still suitable under the present international economic environment? In my opinion, the answer must emphatically be "No". I shall give my reasons.

First, it has been agreed between the parties that, in respect of some of the transactions between them, the payment should be by US dollars (and this is shown by the fact that the relevant invoices issued by the plaintiff to the defendant stated the amount due in US dollars) and it would be wrong in principle to allow mere precedents to deny the plaintiff's right to be paid in US dollars, or to be paid in the manner as prayed in the pleading where the sum claimed can alternatively be paid in the local currency (ie, the Malaysian ringgit).

Second, as far as I can see, there is nothing impractical, nor any legal impediments that I know of (apart from the two case law precedents cited), with regard to giving judgment in US dollars, or to giving judgment in the manner as prayed for in the statement of claim ('the sum of USD86,488.10 or its equivalent in Ringgit Malaysia on the date of judgment'). US dollars, like many other major currencies (eg, sterling, Swiss francs, the Japanese yen and the Singapore dollars, just to name a few) are, presently, commonly used in international trade and finance and are, indeed, as we all know, easily purchased from the banks and moneychangers. And in this regard it must be appreciated here that, as I have just pointed out, the plaintiff is not insisting that they must be paid in US dollars. They are flexible. They have stated in their statement of claim that, as an alternative, they are claiming for payment in Malaysian ringgit equivalent to the sum claimed as stipulated in US dollars.

Third, our law must keep abreast with developments and changes in the world economy and with current practices in international trade and finance, including changes and developments in international economic law (or transnational economic law) that have taken place since the 1930s. Under the present international economic order, our courts can no longer adhere to such a narrow and outdated perception of the law, as exhibited by the 1936 decision of *Overseas Chinese Banking Corporation.*

It must be pointed out that the principle in *Overseas Chinese Banking Corporation* is no longer regarded as good law in other jurisdictions, eg, in the United Kingdom and in Singapore.

In the United Kingdom, prior to *Schorsch Meier GmbH v. Hennin* [1975] All ER 152, the principle applied by the courts was the same as in *Overseas Chinese Banking Corporation.* In *Re United Railways of the Havana and Regla Warehouses* [1960] 2 All ER 332 (hereinafter shall be referred to as the *"Havana Railways"*) the House of Lords held that, on a foreign currency claim, judgment can only be given in sterling, to which the foreign currency must be converted as at the date when the debt became due. In *Havana Railways*, the claim was for a debt in US dollars, due under a contract the proper law of which was held to be the law of Pennsylvania. The debtor (the United Havana Railways Co.) was English, whilst the creditor was American. In their judgment, the House of Lords decided that the provable sum in US dollars had to be converted into sterling at the rate of exchange prevailing when the relevant sums fell due and were not paid. They rejected the counter-suggestion that conversion should be made at the date of judgment.

In *Havana Railways,* the leading judgment was delivered by Viscount Simonds who said (at p. 340):

> The question summarily stated is what sum in sterling is recoverable by a plaintiff suing in the courts of this country for a sum of money payable in foreign currency in a foreign country under an instrument of which the proper law is a foreign law. Admittedly, the claim must be for a sterling sum and the judgment must be in sterling. It is established by authority binding on this House that a claim for damages for breach of contract or for torts in terms of a foreign currency must be converted into sterling at the rate prevailing at the date of breach or tortious act; see eg, *S.S. Volturno* [1921] 2 AC 544.

In the same case, Lord Reid explained the reason for the principle (at p. 345):

> The reason for the existing rule is, I think, primarily procedural. A plaintiff cannot sue in England for payment of dollars and he cannot get specific performance of a contract to pay dollars – it would not be right that he should. So, at best, he could only have the dollars converted to sterling at the date of the judgment.

Lord Denning, in the same case, stated the law in clear terms (at p. 356):

> And if there is one thing clear in our law, it is that the claim must be in sterling and the judgment given in sterling. We do not give judgments in dollars anymore than the United States courts give judgments in sterling.

However, in the later case of *Schorsch Meier*, the English Court of Appeal declined to follow *Havana Railways*. Although faced with a unanimous decision of the House of Lords in *Havana Railways*, the Court of Appeal in *Schorsch Meier*, by a majority, held that an English court could give a money judgment in a foreign currency, when that currency was the currency of the

contract. The majority of the Court of Appeal held that changed circumstances had nullified the reasons which had led to the formulation of the sterling-judgment rules, and that the legal maxim *'cessante ratione cessat ipsa lex'* permitted the court to declare that the rule of law so established were no longer of binding force, and, accordingly, to discard the rule. The English Court of Appeal approved the procedure under which orders can be made for payment of foreign currency debts in the foreign currency. The form as approved is as follows:

> It is adjudged ... that the defendant do pay to the plaintiff (the sum in foreign currency) or the sterling equivalent at the time of payment.

In *Schorsch Meier*, Lord Denning MR, departing from his earlier views as expressed in *Havana Railways*, explained the origin of the sterling-judgment rule (at p. 155):

> So far as I can discover, no one has ever before asked an English court to give judgment in a foreign currency. It has always been assumed that it cannot be done. As long ago-as in 1605 a merchant sold some cloth to another for 60 Flemish pounds. He brought an action of debt in which he claimed the English equivalent, namely, 39 pounds sterling. The defendant said he was not indebted in English pounds. The court overruled his objection, and said:
>
> > ... and the debt ought to be demanded by a name known, and the Judges are not apprised of Flemish money; and also when the plaintiff has his judgment, he cannot have execution by such name; for the sherrif cannot know how to levy the money in Flemish.
>
> See *Rastell v. Drapper* [1605] Yelv 80 at 80, 81. A few years later this was reaffirmed. In 1626 it was agreed by all the judges that 'in the case of foreign coin, such as Flemish, one must declare the value in English': see *Ward v. Kidswin* [1662] Latch 77 which is reported in Norman French but translated in the *Havana (Railways)* case.
>
> > From that time forward it has always been accepted that an English court can only give judgment in sterling. Judges and text writers have treated it as self-evident proposition. No advocate has ever submitted the contrary. The modern cases start with *Manners v. Pearson & Son* [1898] 1 Ch 581 at 587 in which Lindley MR said: 'Speaking generally, the Courts of this country have no jurisdiction to order payment of money except in the currency of this country.

Then, interestingly, Lord Denning proceeded to explain the rationale for the rule (at p. 155):

> Why have we in England insisted on a judgment in sterling and nothing else? It is, I think, because of our faith in sterling. It was a stable currency which had no equal. Things are different now. Sterling floats in the wind. It changes like a weathercock with every gust that blows. So do other currencies. This change compels us to think again about our rules. I ask myself: why do we say that an English court can only pronounce judgment in sterling? Lord Reid in the *Havana* case thought it was 'primarily procedural'. I think so too. It arises from the form in which we used to give judgment for money. From time immemorial the courts of common law used to give judgment in these words: 'it is adjudged that he plaintiff do recover against the defendant X pounds in sterling.' On getting such a judgment the plaintiff could at once issue a writ of execution of X pounds. If it was not in sterling, the sheriff would not be able to execute it. It was therefore essential that the judgment should be for a sum of money in sterling: for otherwise it could not be enforced.

Having so explained, Lord Denning went on to declare that the reason for the rule no longer existed, at the same time acknowledging the validity of criticisms against the rule (at p. 156):

> Seeing that the reasons no longer exist, we are at liberty to discard the rule itself. *Cessante ratione legis cessat ipsa lex*. The rule has no support amongst the juridical writers. It has been criticised by many. Dicey (*Conflict of Laws* (9th Edn. 1973, p. 883)) says:
>
> > Such an enforcement of the law of procedure upon substantive rights is difficult to justify from the point of view of justice, convenience or logic.

The next part of Lord Denning's judgment is crucial, for it contains a pronouncement of the new principle (at p. 156):

> The time has now come when we should say that when the currency of a contract is a foreign currency – that is to say, when the money of account and the money of payment is a foreign currency; they can make an order in the form: "It is adjudged this day that the defendant do pay to the plaintiff' so much in foreign currency (being the currency of the contract) 'or the sterling equivalent at the time of payment'. If the defendant does not honour the judgment, the plaintiff can apply for leave to enforce it. He should file an affidavit showing the rate of exchange at the date of the application and give the amount of the debt due converted into sterling at that date. Then leave will be given to enforce payment of that sum.

There has been no appeal to the House of Lords on the above decision of the Court of Appeal.

Then, significantly, in the same year (1975) as the decision in *Schorsch Meier*, came the case of *Miliangos v. George Frank (Textiles) Ltd.* [1975] 3 All ER 801, which further developed the law on the subject. In this case, by a majority decision, the House of Lords refused to follow *Havana Railways*. In *Miliangos*,

the facts are as follows. By an agreement the plaintiff, a national of Switzerland, agreed to sell, and the defendants, an English company, agreed to buy, a quantity of polyester yarn. The proper law of the contract was Swiss law and the money of account and payment was Swiss francs. The yarn was produced by the plaintiff in Switzerland and delivered to the defendants under invoices which stated the price in Swiss francs, payment to be made within 30 days to a Swiss bank. The defendants did not make the payment. So, the plaintiff issued a writ claiming payment, but because by then the sterling fell in value against the Swiss francs, the claim was made in Swiss francs. The defendants did not dispute liability but contended that the plaintiff was not in law entitled to judgment for a sum of money expressed in a foreign currency.

The House of Lords by a majority decision declined to follow *Havana Railways.* Instead, after having considered *Schorsch Meier* (and, of course, many other cases) the House of Lords held that where a plaintiff brought an action for a sum of money due under a contract, he was entitled to claim and obtain judgment for the amount of the debt expressed in the currency of a foreign country if the proper law of the contract was the law of that country and the money of account and payment was that of the same country. If it was necessary to enforce the judgment that amount was to be converted into sterling at the date when leave was given to enforce the judgment. It followed that the plaintiff was entitled to an order that the defendants should pay him the sum due in Swiss francs or the sterling equivalent at the time when leave was given to enforce the judgment.

Thus, there was also changing of the rule by the House of Lords. The sterling-judgment rule was again declared to be no longer good law. Lord Wilberforce said (at p. 812):

> To change it (the sterling-judgment rule) would enable the law to keep in step with commercial needs and with the majority of other countries facing similar problems.

And this is the crucial part of Lord Wilberforce's judgment (at p. 813):

> Can a better rule be stated? I would make it clear that, for myself, I would confine my approval at the present time of a change in the breach-date rule to claims such as those with which we are here concerned, ie, to foreign money obligations, obligations of a money character to pay foreign currency arising under a contract whose proper law is that of a foreign country and where the money of account and payment is that of that country, or possibly of some other country but not of the United Kingdom.

Then the learned Law Lord further ruled (at p. 813-814):

> As regards foreign money obligations (defined above), it is necessary to establish the form of the claim to be made. In my opinion acceptance of the argument already made requires that the claim must be specifically for the foreign currency – as in this case for a sum stated in Swiss francs. To this may be added the alternative 'or the sterling equivalent at the date of ...' (see below). As regards the conversion date to be inserted in the claim or in the judgment of the court, the choice, as pointed out in the *Havana Railways* case, is between (i) the date of action brought, (ii) the date of judgment, (iii) the date of payment. Each has its advantages, and it is to be noticed that the Court of Appeal in *Schorsch Meier* and in the present case chose the date of payment, meaning, as I understand it, the date when the court authorises enforcement of the judgment in terms of sterling ... . This date gets nearest to securing to the creditor exactly what he bargained for. .... So I would favour the payment date, in the sense I have mentioned.

The principle in *Miliangos* has been accepted by the courts of our neighbour, Singapore (see *Wardley Ltd v. Tunku Adnan* [1991] 3 MLJ 366).

Back home, *Miliangos* and *Schorsch Meier* were cited with approval by LC Vohrah J in *Re P Suppiah, (Tara Rajaratnam, judgment creditor)* [1989] 2 MLJ 479 (although the issues there were different from the present case) when the learned judge commented (at p. 482):

> Although these two cases concern international contracts, the trend has been for courts 'to give the law a new direction in a particular case where, on principle and in reason, it appears right to do so.'

Dr. Mann in his book, *Legal Aspect of Money*, (3rd edn. 1971) gives a list of many countries in which a plaintiff can claim payment of a sum of money in a foreign currency and get judgment for it.

In the light of the authorities cited, I am strengthened in my conviction that the principle as enunciated by Terrel J in *Overseas Chinese Banking Corporation*, and relied upon by Rekhraj JC in *Ascot International*, is no longer maintainable but must be changed.

But how should it be changed? If the principle in *Schorsch Meier* were to be followed, our courts can only give judgment in a particular foreign currency where such currency is the currency of the contract.

But if the principle in *Miliangos* were to be adopted, then the requirements are more stringent: our courts can only give judgment in a particular foreign currency if two conditions are satisfied:

(1) where such currency is the currency of the contract; and

(2) the proper law of the contract is the law of the country of that currency.

On my part, I prefer the less strict principle as enunciated in *Schorsch Meier*. The advantage of applying this principle is that the court is spared the task of determining the proper law of the contract. However, in applying either the principle in *Schorsch Meier* or the principle in *Miliangos*, there is a matter to be addressed for the sake of completeness. It is to be recalled that in *Schorsch Meier* the Court of Appeal ruled that the order should be in the form (to repeat):

> It is adjudged ... that the defendant do pay to the plaintiff (the sum in foreign currency) or the sterling equivalent at the time of payment. (emphasis added.)

This means that if, alternatively, the defendant were to pay the judgment sum in the local currency, the rate of conversion has to be the rate as prevailing on the date of payment. But in the present case, however, it is to be observed that the alternative part of the prayer refers – not to the date of payment – but to the date of judgment. As we have noted, it is in the form:

> ... or its equivalent in Ringgit Malaysia **on the date of judgment**; (emphasis added.)

Be that as it may, in my judgment, notwithstanding what is stated in the judgment in *Schorsch Meier* or in *Miliangos*, there is nothing wrong in principle for the alternative claim (payment in local currency) to refer to the date of judgment (as an alternative to the date of payment) for the purpose of the rate of conversion. In fact, it is to be recalled that three choices were recognized in *Havana Railways* and *Miliangos*. I need only to repeat here what was said by Lord Wilberforce in *Miliangos* (at p. 813-814):

> As regards the conversion date to be inserted in the claim or in the judgment of the court, the choice, as pointed out in the *Havana Railways* case, is between (i) the date of action brought, (ii) the date of judgment, (iii) the date of payment.

In *Miliangos*, although Lord Wilberforce, as regards the conversion date, favoured ('I would favour') the date of payment, nevertheless, his lordship did not appear to have any objection to the date of judgment being the conversion date. For, as regards the date of judgment, the comment of the learned judge was merely that (at p. 814):

The date of judgment is shown to be a workable date in practice by its inclusion in the Carriage by Air Act 1961, which gave effect to the Hague Convention 1956 varying, on this point, the Warsaw Convention 1929, but, in some cases, particularly where there is an appeal, may again impose on the creditor a considerable risk. So I would favour the payment date, in the sense I have mentioned.

I would sum up my judgment on the third issue as follows:

(1) This court does not propose to follow the decisions in *Overseas Chinese Banking Corporation* and *Ascot International* as there is no sound rationale for such a principle as enunciated therein. The decisions, if followed, would cause injustice to the plaintiff. Moreover, such decisions are no longer in accord with modern judicial trend or pronouncements on the subject.

(2) A plaintiff suing under a contract may make a claim in foreign currency provided such currency is the currency agreed upon by the parties to the contract for the purpose of payment under the contract. Thus, in the present case, the claim in US dollars in the statement of claim is, legally, in order since it has been agreed by the parties, as shown by the relevant invoices, that payment should be in US dollars.

(3) The alternative claim in equivalent local (Malaysian) currency in the manner as stated in the statement of claim in the present case (ie, without actually specifying the amount in Malaysian ringgit) is also legally proper, and the date of conversion can either be the date of judgment or the date of payment.